

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

MICHAEL SCALZI, an individual,

Case No. 2:17-cv-03001-APG-VCF

Plaintiff,

ORDER GRANTING MOTION TO DISMISS

CITY OF LAS VEGAS,

(ECF No. 10)

Defendant.

10 Plaintiff Michael Scalzi alleges that the City of Las Vegas retaliated against him because he
11 opposed an inadequate disciplinary action taken by the City against Battalion Chief Larry
12 Wickliffe. The City moves to dismiss Scalzi's complaint because he did not engage in any
13 protected activity outside the general work involved in his job as Manager of Employee Relations.
14 Scalzi responds that he reasonably believed he was objecting about an employment practice that
15 was prohibited by Title VII, specifically that the City "was not equally applying and enforcing the
16 city's zero tolerance sexual harassment policy." ECF No. 12 at 5:15-18.

17 Scalzi’s complaint does not allege how the discipline issued to Wickliffe violated the zero
18 tolerance policy, constituted an unequal application of the policy, or was prohibited by Title VII.
19 Nor does the complaint explain how Scalzi’s actions were taken outside of his role as Manager of
20 Employee Relations. *Motoyama v Haw. Dep’t of Transp.*, 864 F. Supp. 2d 965, 978 (D. Haw. 2012)
21 (“Plaintiff’s mere participation in and investigation of employee complaints, as part of her job, is
22 not a protected activity.”); *see also Nelson v. Pima Cnty. Coll.*, 83 F.3d 1075, 1082 (9th Cir. 1996)
23 (holding Title VII “does not prevent an employer from dismissing an employee who handles
24 discrimination complaints as part of his job when the employee handles these complaints contrary
25 to the instructions of his employer”) (quotation omitted).

1 Thus, the complaint fails to state a claim upon which relief can be granted. I will dismiss
2 the complaint but allow Scalzi the opportunity to file an amended complaint if he can cure the
3 defects pointed out in this order.

4 IT IS HEREBY ORDERED that the City of Las Vegas's motion to dismiss (**ECF No. 10**)
5 **is GRANTED.** The complaint is dismissed without prejudice. The plaintiff may file an amended
6 complaint within 21 days of entry of this order.

7 Dated: April 6, 2018.



8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28